

103 KAR 16:250. Net operating loss deduction for corporations.

RELATES TO KRS 141.011, 141.200

STATUTORY AUTHORITY: KRS 131.130, 141.018

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under KRS Chapter 141 on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to prior and subsequent taxable years on taxable net income as authorized by KRS 141.011 and 141.200(11)(b).

Section 1. Definitions. (1) "Allowable net operating loss carryforward from a previous period" means for a nexus consolidated filer, a net operating loss carryforward computed under the provisions of Section 2(3) or (4) of this administrative regulation.

(2) "Corporation" is defined by:

(a) KRS 141.200(2)(d) for an elective consolidated return; or

(b) KRS 141.010(24) for a separate or nexus consolidated return for periods beginning on or after January 1, 2005.

(3) "Corporation income tax nexus" means being subject to the corporation income tax imposed by KRS 141.040(1).

(4) "Current year loss limitation" means the limitation provided by KRS 141.200(11)(b).

(5) "Current year loss limitation adjustment" means the amount of net operating losses of the includible corporations in a nexus consolidated return, including any allowable net operating loss carryforward from a previous period that exceeds the current year loss limitation.

(6) "Elective consolidated filer" means a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.200(3) and (4).

(7) "Elective consolidated return" means a return defined under KRS 141.200(2)(b).

(8) "Includible corporation" is defined in KRS 141.200(9)(d).

(9) "Net operating loss" means net operating loss defined under the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

(10) "Nexus consolidated filer" means a corporation as defined under KRS 141.010(24), filing in accordance with KRS 141.200(8), (9), (10) and (11).

(11) "Nexus consolidated return" means a return defined under KRS 141.200(9)(f).

(12) "Separate return" is defined by KRS 141.200(2)(c) or 141.200(9)(g).

(13) "Separate return filer" means a corporation filing in accordance with KRS 141.200(3) or 141.200(10).

Section 2. Computation and Application of Net Operating Loss. (1) "Separate return filers" and "elective consolidated filers" shall compute net operating loss for Kentucky purposes in the following manner:

(a) Apportionment factor provided by KRS 141.120 shall be applied to the net operating loss; and

(b) The apportioned net operating loss shall be available for carryforward.

(2) "Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in accordance with this subsection:

(a) Net operating loss computations shall be made before application of the apportionment factor provided by KRS 141.120.

(b) The current year loss limitation adjustment shall be:

1. Added to net income if the total of the net operating losses for the includible corporations that have incurred a net operating loss for the current taxable year and any allowable net operating loss carryforward from a previous period exceeds the current year loss limitation; or

2. Subtracted from net income if the current year loss limitation is greater than the total of the current year losses of includible corporations and any allowable net operating loss carryforward from a previous period.

(c) Any current year loss limitation adjustment that exceeds the current year loss limitation shall be available as a Kentucky net operating loss carryforward, and shall be available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).

(3) Separate return loss year rules for a nexus consolidated return. This subsection shall apply if a corporation that previously filed a separate return, and incurred net operating losses as a separate entity, will now be filing as part of a consolidated nexus return, and establishes how those separate net operating losses shall be treated as part of the consolidated nexus return.

(a) Separate entity filers having a net operating loss carryforward for the most recent period that began prior to January 1, 2005, may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11), if:

1. The separate return filer had nexus for Kentucky corporation income tax purposes for the separate return periods that generated the loss; and

2. A supplemental statement as required by paragraph (c) of this subsection of this subsection, is attached to the return.

(b) The net operating loss carryforward shall be adjusted to a pre-apportionment amount unless an election has been made to utilize the net operating loss carryforward as an apportioned amount.

(c) A supplemental statement shall be attached to the Kentucky consolidated return that reflects a breakdown of the separate return loss carryforward amounts by entity.

(4) Elective consolidated net loss carryforward to a nexus consolidated return period. This subsection shall apply if an elective consolidated filer who incurred net operating losses as a consolidated group will now be filing as part of one or more consolidated nexus returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the consolidated nexus return.

(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11).

(b) Any net operating loss carryforward from the last return of an elective consolidated group shall be computed under the provisions of Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502 and related federal regulations and be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(c) The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.

(d) If any of the corporations that filed as part of the elective consolidated return did not have nexus with Kentucky for the consolidated return periods that generated the net operating loss, that corporation's share of the net operating loss shall not be carried forward to a nexus consolidated return.

(e) If the election period defined in KRS 141.200(2)(e) has expired and the elective consolidated return group is survived by one or more nexus consolidated groups, the requirements established in this paragraph shall apply.

1. Compute on a separate entity basis, the pre-apportionment loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return reflecting this computation.

2. The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.

3. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:

a. Add all separate entity losses together;

b. Divide each separate entity loss amount by the total of the separate entity losses; and

c. Multiply the resultant percentage by the consolidated net operating loss carryforward.

4. Carry the loss carryforward amount calculated in subparagraph 3c of this paragraph to the nexus consolidated return in which the corporation is an includible corporation under the provisions of KRS 141.200(9) through (14).

(5) Elective consolidated net operating loss carryforward to a separate return filer. This subsection shall apply if an elective consolidated filer who has incurred net operating losses as a consolidated group will now be filing separate entity returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the separate entity returns.

(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to separate returns filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g). The following requirements shall apply to this situation.

1. Compute on a separate entity basis, the post-apportionment Kentucky loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return and the separate corporation returns reflecting this computation.

2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:

a. Add all separate entity losses together;

b. Divide each separate entity loss amount by the total of the separate entity losses;

c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and

d. Carry the separate entity loss computed in clauses a to c of this subparagraph to the first separate return due after the expiration of the elective consolidated return.

(6) Nexus consolidated net operating loss carryforward to a separate return period. This subsection shall apply if a nexus consolidated filer ceases to exist who had incurred net operating losses as a consolidated group, and will now be filing separate entity returns, and establishes how those nexus consolidated net operating losses shall be treated for purposes of the separate entity returns.

(a) If a nexus consolidated filer ceases to exist and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to the separate returns filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g). The following requirements shall apply to this situation.

1. Compute on a separate entity basis, the post-apportionment Kentucky loss for each loss corporation that was included as part of the consolidated net operating loss computed on the last return filed by the nexus consolidated group. The separate entity net operating loss carryforward shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with each separate corporation return reflecting this computation.

2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:

- a. Add all the separate entity computed losses together;
- b. Divide each separate loss amount by the total consolidated loss amount;
- c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and
- d. Carry the separate entity net operating loss carryforward computed in clauses a to c of this subparagraph to the first separate return due after the nexus consolidated group ceases to exist.

(7) Partnerships and limited liability entities that are subject to the corporation income tax imposed by KRS 141.040 that are owned by corporations as defined by KRS 141.010(24) shall be allowed to take a net operating loss deduction on their corporate income tax return for taxable periods beginning on or after January 1, 2006 for net operating loss carryforwards at the entity level.

Section 3. This administrative regulation shall apply to the computation of the net operating loss deduction of corporations for taxable years beginning on or after January 1, 2005 except where otherwise noted in this administrative regulation. (32 Ky.R. 1827; 33 Ky.R. 70; eff. 8-7-2006.)